

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:MSR:NCE:STP:TL-N-3091-00  
LLZoss

date: July 6, 2000

to: Chief, Examination Division, North Central District  
Attn: Gary L. Goldsmith, Case Manager, CEP Group 1220

from: District Counsel, North Central District, St. Paul

subject: [REDACTED]

Earliest SOL: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This is written in response to your request for our opinion concerning the proper name to be entered on consents to extend statutes of limitations and on closing agreements [REDACTED], and its subsidiaries. We recommend that statute extension forms and closing agreements be captioned as indicated below.

FACTS

On [REDACTED], [REDACTED] ([REDACTED]), and its consolidated subsidiaries, EIN [REDACTED] ([REDACTED]), were acquired by and merged into [REDACTED] ([REDACTED]), formerly known as [REDACTED], EIN [REDACTED] ([REDACTED]).

According to the joint proxy statement/prospectus issued prior to the closing of the transaction, the transaction occurred pursuant to an agreement and plan of merger dated [REDACTED]. Both [REDACTED] and [REDACTED] were Delaware corporations. Under the agreement and plan of merger, [REDACTED], a newly formed and wholly owned subsidiary of [REDACTED], was merged with and into [REDACTED], as a consequence of which [REDACTED] became a wholly owned subsidiary of [REDACTED]. [REDACTED] then changed its name to [REDACTED].

#### DISCUSSION

Treas. Reg. § 1.1502-77(a) provides generally that the common parent of a consolidated group is the sole agent for each subsidiary in the group for any consolidated return year. Expressly included in the authority of the common parent is the power to execute waivers. Treas. Reg. § 1.1502-77(a) further provides that its provisions shall apply "whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time."

Treas. Reg. § 1.1502-77T provides for alternative agents where a corporation that is the common parent of a group ceases to be the common parent. Under Treas. Reg. § 1.1502-77T(a)(3) & (4), a waiver of the statute of limitations given with respect to the group will be deemed to be given by the agent for the group if it is given by any of the following:

- (i) The common parent of the group for all or any part of the year to which the notice or waiver applies,
- (ii) A successor to the former common parent in a transaction to which section 381(a) applies,
- (iii) The agent designated by the group under § 1.1502-77(d), or
- (iv) If the group remains in existence under § 1.1502-75(d)(2) or (3), the common parent of the group at the time the notice is mailed or the waiver given.

I.R.C. § 381(a)(2) applies where a corporation acquires the assets of another corporation in a transfer to which section 361 applies, if the transfer is in connection with a reorganization which is, inter alia, described in I.R.C. § 368(a)(1)(F).

In the present case, [REDACTED] can execute consents for the [REDACTED]'s pre-merger taxable years as agent for the group because it is still in existence. The fact that [REDACTED] is now a subsidiary of

█ would not seem to impact this result. Accordingly, we recommend that future statute extensions and closing agreements be prepared as follows.

1. The taxpayer's name should read:

█ (EIN █), as agent  
for the consolidated group \*

The following footnote should be put at the bottom of the page:

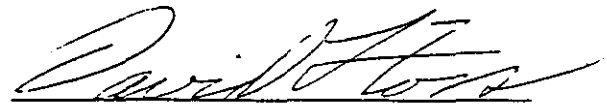
\* This is with respect to the consolidated income tax liability of the █ (EIN █), consolidated group for the taxable year ended █.

2. Signature blocks should name "█, EIN █," and should be executed by a current officer of █.

If you have any questions respecting this matter, please call David L. Zoss at 290-3473, ext. 242.

REID M. HUEY  
District Counsel

By:

  
DAVID L. ZOSS  
Senior Attorney

cc: Assistant Chief Counsel  
(Field Service)

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<sup>1</sup>We assume the taxable year of the █ consolidated group ended █, given the statute expiration date of █.